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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,001	01/09/2001	Christopher C. Burger	CPL1538-196	8540

8698 7590 02/13/2003
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EXAMINER

VO, HAI

ART UNIT	PAPER NUMBER
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1771

9

DATE MAILED: 02/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/758,001

Applicant(s)

BURGER ET AL.

Examiner

Hai Vo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stucky et al (US 6,344,268). Stucky teaches a composite material comprising a foamed polymer layer and a synthetic wood layer being secured to the foam layer (column 3, lines 5-10). Stucky discloses the foam layer comprising 100 wt % PVC, 0.3 wt % blowing agent, 10 wt% acrylic processing aid and small amount of additives such as lubricant, stabilizer (column 4, lines 8-10, table II). Stucky discloses the wood synthetic layer comprising 35 to 75 wt % PVC or polypropylene, 25 to 65 wt % wood fiber, and additives such as lubricant, stabilizer, and processing aid (column 3, line 23 et seq.). However, such an amount of each component in the composition would have been recognized by one skilled in the art to impact the strength of the composite and control the cost of the product. As such, in the absence of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the component of the composition having an amount instantly claimed since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

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With regard to claims 4, 16, Stucky discloses the foam layer secured to the synthetic wood layer by an adhesive. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an adhesive to bind the foam layer to the synthetic wood layer motivated by the desire to improve the bonding between the two layers.

With regard to claims 5, 17, Stucky is silent as to the foam layer secured to the synthetic wood layer by a mechanical fastening device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a mechanical fastening device to join the foam layer to the synthetic wood layer since the examiner takes Official Notice of the equivalence of adhesive and a fastener for their use in the wood siding and the selection of any of these known equivalents would be within the level of the ordinary skill in the art.

With regard to claims 10, 21, Stucky further discloses the composite comprising an inorganic filler (column 4, lines 61-63). Stucky does not specially disclose an amount of the inorganic filler. However, such an amount of each component in the composition would have been recognized by one skilled in the art to impact the strength of the composite. As such, in the absence of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the component of the composition having an amount instantly claimed since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

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3. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrickson et al (US 6,122,877). Henderickson teaches a non-foamed siding unit having a hollow portion filled with a foamed thermoplastic material (column 11, line 52 et seq.). Henderickson discloses the foam thermoplastic material layer made of the same composition as the non-foamed siding unit (column 15, lines 48-51).

Henderickson discloses the non-foam siding unit comprising 60 wt % PVC or polypropylene, and 40wt % sawdust, 15 parts TiO₂, 2 parts lubricant, 1.5 parts stabilizer, and 7.5 parts of processing aid based on 100 parts of PVC (column 12, lines 50-53; column 16, lines 65 et seq.). Hendrickson is silent as to the amount of the blowing agent. However, such a variable would have been recognized by one skilled in the art to control the degree of porosity of the foam. As such, in the absence of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the component of the composition having an amount instantly claimed since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With regard to claims 4, 5, 16 and 17, Hendrickson discloses the foam layer secured to the synthetic wood layer by an adhesive or a fastener (column 15, lines 65-66; column 16, lines 45-50).

Response to Arguments

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4. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.
5. The art rejections in Paper no. 5 have been overcome by the present amendment and response.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426. The examiner can normally be reached on Tue-Fri, 8:30-6:00 and on alternating Mondays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

HV
February 4, 2003



TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700